

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

VAN A. LUPO,

Plaintiff

v.

BANK of AMERICA,

Defendant

C.A. Number 04-40202-FDS

ASSENTED TO MOTON FOR RELIEF FROM LOCAL RULE 15.1

In regards to

**ASSENTED TO MOTON of PLAINTIFF'S TO AMEND PLEADINGS TO JOIN
THIRD-PARTY DEFENDANT, SHERYL LUPO**

NOW COMES the Plaintiff in the above titled matter and respectfully requests that this Honorable Court grant the Plaintiff relief from Local Rule 15.1. In support of this motion the Plaintiff states as follows:


1. On October 31, 2005 the Plaintiff file an Assented to Motion of Plaintiff's to Amend Pleadings to Join Third-Party Defendant, Sheryl Lupo. That motion had an accompanying proposed Amended Complaint. The Motion and related paperwork were filed within the scheduling order time frame.
2. The Plaintiff, through, his counsel received a call from the Clerk stating that the Motion to Amend must be made under Local Rule 15.1 and especially Local Rule 15.1(b).
3. Local Rule 15.1(b) states "a party moving to amend a pleading to add a new party shall serve, in the manner contemplated by Fed. R. Civ. P. 5(b), the motion to amend upon the proposed new party at least ten (10) days in advance of filing the motion, together with a separate document stating the date on which the motion will be filed. A motion to amend a pleading to add a new party shall be accompanied by a certificate stating that it has been served in advance on the new party as required by this rule."

4. Plaintiff's counsel attempted to serve the Motion and proposed Amended Complaint on the potential new 3rd party defendant, Sheryl Lupo in compliance with Local Rule 15.1, by hiring a process server in California to serve Sheryl Lupo on November 12, 2005 (see attached cover letter to process server, cover letter to Ms. Lupo that was to be served with the Motion marked hereto as Exhibit 1).
5. Plaintiff, through his counsel, called the Clerk and told the Clerk that the Plaintiff had complied with Local Rule 15.1(b).
6. Plaintiff received an additional bill from the process server in California for additional process serving fees.
7. The Plaintiff believed that the proposed 3rd party defendant had been properly served.
8. Counsel for Bank of America sent an email to Plaintiff's counsel on January 3, 2006 asking if the 3rd party defendant had been served. Plaintiff's counsel responded with yes, the 3rd party defendant had been served, and that the Plaintiff's counsel would follow up to make sure the Return of Service was properly filed with the court.
9. Plaintiff's counsel contacted the process server in California and requested that the process server fax Plaintiff's counsel proof of service, and also put a copy in the mail to her. The process server agreed and said he would get the fax out that day. Much to Plaintiff's counsel's surprise, and after several more phone calls to the process server, Plaintiff's counsel learned, that in fact, the 3rd party defendant, Sheryl Lupo, had never been served.
10. Plaintiff's counsel then called Clerk and asked for his help. The Clerk, through the judge's suggestion, stated that the Plaintiff should file a Motion for Relief from Rule 15.1 and properly serve the 3rd party defendant, Sheryl Lupo.

Thus, in the interest of justice the Plaintiff respectfully requests that this Honorable Court grant Plaintiff's Assented to Motion for Relief from Local Rule 15.1 so that the 3rd party defendant can be properly joined and so that this case can move forward.

Respectfully Submitted,

Van A. Lupo
By his Counsel


Jill C. Shedd
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DATED: January 9, 2006

Assented To:

Bank of America
By its Counsel

/s/ assented to signature via email
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